
OLR Bill Analysis

sSB 1086 (File 199, as amended by Senate “A” and “B”)*

AN ACT CONCERNING COERCED DEBT.

SUMMARY

This bill prohibits anyone from making another individual liable for “coerced debt,” which the bill defines as all or part of any unsecured personal, family, or household debt in the name of a debtor who is a domestic violence victim incurred (1) because of duress, intimidation, threat of force, force, fraud, or undue influence and (2) on or after October 1, 2023 (§§ 1 & 2).

The bill also imposes specific obligations and responsibilities on, and gives certain rights to, coerced debt “claimants” (see below). Specifically, if a debtor gives a claimant certain written documentation that a debt is coerced debt, the claimant must pause all collection activities on the debt, review the documentation and other available information it has, and then continue or end its collection based on the review. Among other things, claimants must also, if they give adverse information about a debtor to a consumer credit reporting agency and end their collection activities, notify the agency to delete the information (§ 3).

Additionally, under the bill and in order to establish that a debt is coerced debt, a debtor may (1) bring an action against a claimant and (2) assert a cross complaint and take certain other measures in any action brought by a claimant against the debtor to recover the debt (§ 4). If a court determines that all or part of a debt is coerced debt, then the individual who caused the coerced debt is civilly liable (1) to the claimant for the debt amount, (2) for the claimant’s attorney’s fees and costs in recovering the debt, and (3) for the debtor’s attorney’s fees and costs related to the court action (§ 2).

The bill explicitly states that it does not:

1. require a court to order a claimant to refund any money already paid on a debt that is determined to be coerced debt,
2. diminish the rights of a claimant to recover payment for a coerced debt from any individual who coerced a debtor into incurring the coerced debt, or
3. reduce or eliminate any other rights or defenses available to a debtor or claimant pursuant to any other law (§ 4).

*Senate Amendment "A" replaces the original bill (File 199), including removing the provisions in the underlying bill that (1) required consumer collection agencies to stop a debt collection if someone gave them documentation that the collection involved coerced debt, (2) permitted consumer collection agencies to pursue collection against individuals found to be the perpetrators of coerced debts based on the documentation, and (3) generally required credit rating agencies to reinvestigate debt identified as coerced debt if someone gave them related documentation and to remove any reference to the debt from the individual's credit report if they determined it was coerced debt.

*Senate Amendment "B" replaces Senate Amendment "A" with substantially similar provisions and some additional changes. Principally, the changes to Senate "A" include (1) requiring that qualified third-party professionals who may provide supporting documentation that a debt is coerced debt represent or provide consultation to a debtor on the coerced debt; (2) making individuals who caused the coerced debt, as determined by a court, civilly liable for certain attorney's fees and costs; (3) allowing court-issued restraining and protective orders to be supporting documentation that a debt is coerced debt; (4) requiring debtors to give claimants the identity of any individual who caused the coerced debt if a claimant ends collection activities against the debtor; (5) explicitly allowing debtors and claimants to implead third parties and assert cross complaints in actions brought by the other; and (6) requiring the court to issue specific orders and findings if individuals who caused the coerced debt are parties to an action.

EFFECTIVE DATE: October 1, 2023

§ 1 — DEFINITIONS

The bill's provisions apply to coerced debt in the name of a domestic violence victim incurred on or after October 1, 2023. Under the bill, a "claimant" is an individual or entity, or a successor or assignee, that has or purports to have a claim against a debtor arising from a coerced debt or an allegedly coerced debt. A "debtor" is anyone against whom a claimant asserts a claim arising from a coerced debt or allegedly coerced debt, and a "claim" is a right to payment, regardless of whether the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, or equitable.

A "claimant" explicitly includes a debt collector or a debt buyer and excludes someone who causes a claim to arise through duress, intimidation, threat of force, force, fraud, or undue influence perpetrated against a debtor.

By law and under the bill, "domestic violence" is:

1. a continuous threat of present physical pain or physical injury against a family or household member;
2. stalking, including 2nd degree stalking, of a family or household member;
3. a pattern of threatening, including 2nd degree threatening, of a family or household member or a third party that intimidates the family or household member; or
4. coercive control of a family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.

"Coercive control" includes unreasonably:

1. isolating the family or household member from friends, relatives, or other support;

2. depriving the family or household member of basic necessities;
3. controlling, regulating, or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources, or access to services;
4. compelling the family or household member by force, threat, or intimidation, including threats based on actual or suspected immigration status to (a) do something they have a right not to do or (b) not do something they have a right to do;
5. committing or threatening to commit cruelty to animals that intimidates the family or household member; or
6. forcing the performance of sex acts or making threats of a sexual nature, including threatened acts of sexual conduct, threats based on a person's sexuality, or threats to release sexual images (CGS § 46b-1).

By law, "family or household members" are any of the following, regardless of age:

1. spouses or former spouses;
2. parents or their children;
3. people related by blood or marriage;
4. people not related by blood or marriage living together or who have lived together;
5. people who have a child in common, regardless of whether they are or have been married or have lived together; and
6. people who are or were recently dating (CGS § 46b-38a).

§§ 1 & 3 — CLAIMANT COLLECTION ACTIVITIES

Written Documentation of Coerced Debt

Under the bill, if a claimant receives specified types of written documentation, then it must pause all collection activities on a debt until

it has completed a review required by the bill (see below).

Specifically, as described further below, the claimant must cease collection activities if it receives (1) at least one form of documentation identifying the debt as coerced; (2) a certification from the debtor that the debt is coerced; and (3) specified types of additional documentation or information if they are relevant to the allegation of coerced debt.

Identifying Coerced Debt. Under the bill, the documentation that identifies the debt as a coerced debt must also describe the circumstances under which the allegedly coerced debt was incurred. The documentation must be a:

1. police report,
2. Federal Trade Commission identity theft report that identifies the debt as a coerced debt and not as a debt incurred due to identity theft,
3. restraining order or protective order issued by a court of competent jurisdiction, or
4. specific document prepared by a qualified third-party professional.

Under the bill, a “qualified third-party professional” is a properly Connecticut-credentialed domestic violence or sexual assault counselor, psychiatrist, psychologist, clinical social worker, marital and family therapist, professional counselor, or an attorney who represents or provides consultation to a debtor concerning a coerced debt.

The document from a qualified third-party professional must:

1. be based on information the professional received while acting in his or her professional capacity;
2. be certified by the professional as specified in the bill (see below); and
3. display the letterhead, address, and telephone number of the (a)

office, institution, center, or organization that has engaged or employs the professional regardless of whether he or she is financially compensated or (b) professional if he or she is self-employed.

Debtor Certification. Under the bill, this document must include a certification from the debtor as specified in the bill (see below) that a debt is a coerced debt and that any material fact is true.

Additional Documentation and Information. Under the bill, the additional documents and information include the following if they are relevant to the debtor's allegation that a debt is a coerced debt:

1. a copy of the debtor's driver's license, identification card, or any other identification document that supports the allegation;
2. an express written statement by the debtor disclosing (a) that the debtor did not willingly authorize the use of the debtor's name or personal information to incur the debt, (b) specific facts supporting the debtor's allegation, if available, and (c) the part of the debt that the debtor alleges is a coerced debt, if the debtor alleges that only part of the debt is coerced debt;
3. any available correspondence disputing the coerced debt;
4. any information known by the debtor, including any credit card number or loan number, that the claimant may use to identify the account associated with the debt and the individual or individuals in whose name the debt was incurred; and
5. a telephone number that the claimant may use to contact the debtor to get more information from, or pose questions to, the debtor, or, if the debtor prefers to communicate with the claimant in writing, a statement by the debtor indicating that the claimant must communicate with the debtor exclusively in writing and disclosing the debtor's mailing address, email address, or both.

Under the bill, the additional information also includes the identity of and, if known by the debtor, contact information for, any individuals

whom the debtor alleges coerced the debtor into incurring the debt, unless the debtor signs a sworn statement that disclosing the information is likely to result in abuse to the debtor or any immediate family member of the debtor. However, the debtor must disclose this information if the claimant (1) notifies the debtor that the claimant is ending collection activities and releasing the debtor from any liability for the debt and (2) when giving the notice, requests that the debtor disclose the information. An “immediate family member” includes a spouse, child, sibling, parent, grandparent, or grandchild and includes stepparents, stepchildren, stepsiblings, and adoptive relationships (CGS § 36a-485).

Certification Requirements. The bill requires that the above certifications be in substantially the following form:

“I declare under penalty of perjury that the representations made herein are true, correct, and contain no material omissions of fact.

Dated at ..., Connecticut, this ... day of ..., 20...

.... (Signature)”.

Claimants’ Duties to Notify Debtors on How and What to Submit

Under the bill, if a debtor orally notifies a claimant that a debt being collected is a coerced debt, the claimant must notify the debtor, orally or in writing, that the debtor’s notification must be in writing and according to the bill’s above requirements.

If a debtor notifies a claimant in writing that all or part of a debt being collected is coerced debt, but omits any item required by the above bill requirements, and if the claimant does not end collection activities for the debt, the claimant must give written notice to the debtor identifying the omitted item.

Claimants’ Review and Determination

Under the bill, within 10 business days after a claimant receives the above items required by the bill, the claimant must perform a good-faith review to determine whether the debt is a coerced debt after considering

all information provided by the debtor and all other relevant information available to the claimant. Additionally, if the claimant previously gave adverse information about the debtor to a credit rating agency, the claimant must notify the agency that the debt identified by the debtor is disputed.

Within 10 business days after the claimant completes the review, the claimant must notify the debtor, in writing, of the claimant's determination and the good-faith basis for it.

If the claimant determines, in good faith, that the available information establishes that the debt is coerced debt, the claimant must end its collection activities against the debtor for the coerced debt. If the claimant gave adverse information to a credit rating agency in connection with the coerced debt, it must also notify the agency, within 10 business days after the claimant's determination, to delete the information.

Conversely, if the claimant determines, in good faith, that the available information does not establish that the debt is a coerced debt, the claimant may continue its collection activities for the debt after it notifies the debtor, in writing, about its determination.

Interpretation Prohibitions

The bill prohibits anyone from inferring or presuming that the debt identified by the debtor is valid or invalid or that the debtor is liable or not liable for the debt based on the claimant's review determination to end or continue its collection activities for the debt. Additionally, the exercise or non-exercise of any right under the bill is not a waiver of any of the debtor's or claimant's other rights or defenses, including any right or defense that may be asserted against any individual who coerce a debtor into incurring a debt.

§§ 1 & 4 — COURT ACTIONS

Actions Brought by Debtor

The bill allows a debtor to bring an action against a claimant to establish that a debt is coerced debt. It requires debtors, no later than 30

days before starting an action under the bill or any other action against the claimant in connection with an allegedly coerced debt, to send the claimant (1) a written notice disclosing the debtor's intent to start the action and (2) the written documentation of coerced debt required under the bill (see § 3 above). The bill specifies that the 30-day period begins when the claimant receives the debtor's written notice and requires that the notice be sent by certified mail, overnight delivery, or any other method allowing for confirmation of the date on which the notice is delivered. The address used for the notice must be to the one the claimant provides to the debtor for the purpose of receiving the notice, or, if the claimant has not provided any address, to the claimant's principal place of business as identified on the secretary of the state's website. If an address is unavailable through that website, the debtor may use the claimant's correspondence address.

The bill prohibits a debtor from starting his or her action if (1) the claimant informs the debtor that it has ended all collection efforts on the debt and (2) the debtor receives written notice about this before the 30-day period above expires. The bill explicitly allows a debtor (presumably, after the 30-day period) to start his or her action if he or she receives a written notice disclosing the claimant's good-faith determination that the available information provided to it under the bill does not establish that the allegedly coerced debt is a coerced debt.

The bill requires debtors to attach to any complaint by the debtor alleging that a debt is a coerced debt the written documentation of coerced debt required under the bill (see § 3 above).

Claimant and Debtor Responses to Actions

The bill allows a claimant against whom a debtor brings an action asserting a coerced debt to do the following:

1. implead any third party who is or may be liable for the debt that is alleged to be coerced debt as long as the third party is served with a third-party complaint within one year after the date on which the debtor's action is returned to court; and

2. assert a cross complaint against any individual or entity that is or may be liable for the debt that is alleged to be a coerced debt.

Under the bill, in any action brought by a claimant against a debtor to recover a debt, the debtor may:

1. assert a counterclaim or defense to establish that the debt is a coerced debt;
2. implead any third party who is or may be liable for the debt that is alleged to be coerced debt as long as the third party is served with a third-party complaint within one year after the date on which the claimant's action is returned to court; and
3. assert a cross complaint to establish that the debt is a coerced debt.

Debtor Relief

The bill grants specified relief to a debtor who establishes by a preponderance of the evidence in an action that a debt is a coerced debt. Specifically, the following:

1. a declaratory judgment that the debtor is not obligated to the claimant for the coerced debt;
2. an injunction prohibiting the claimant from holding or attempting to hold the debtor liable for the coerced debt;
3. an order dismissing any cause of action brought by the claimant to enforce or collect on the coerced debt from the debtor or, if only a part of the debt at issue is established as coerced debt, an order directing that the complaint and judgment, if any, in the action be amended to reflect only the part of the debt that is not coerced debt;
4. a judgment in favor of the claimant against the individual who coerced the debtor into incurring the coerced debt so long as that individual has been brought within the jurisdiction of the court and joined as a party to the action and the evidence supports the

judgment;

5. an order awarding the debtor attorney's fees and costs, which must be paid by the individual or individuals who coerced the debtor into incurring the debt, if that individual or individuals have been made a party or parties to the action; and
6. an order requiring the claimant, if the claimant has given adverse information to a credit rating agency regarding the debtor in connection with the coerced debt, to notify the agency to delete the information within 10 business days after the order is issued.

Abuse Prevention

The bill allows the court to take any necessary and appropriate steps to prevent abuse of the debtor or his or her "immediate family member" (see above). This includes sealing court records, redacting personally identifiable information about the debtor and his or her immediate family members, or directing that any deposition or evidentiary hearing be done remotely.

Penalties for Frivolous and Dilatory Actions

The bill makes any party to the action liable for attorney's fees and costs incurred as a result of knowingly filing false motions, pleadings, or other papers or engaging in other tactics that are frivolous or intended to cause unnecessary delay.

Court Findings

The bill allows claimants and debtors to move the court to make written findings regarding evidence related to any individual who allegedly caused the coerced debt to be incurred. The court may do so if the (1) individual has been brought within the court's jurisdiction and joined as a party to the action and (2) evidence supports the findings.

Standing and Time Bar for Claimants to Pursue Debt Against Others

The bill explicitly gives claimants legal standing against certain parties if all or part of a claim is established as having arisen from a coerced debt. Specifically, it allows these claimants to use all available

rights and remedies to collect by any lawful means all or part of the claim from any individual determined to have coerced the debt or against any individual who used or possessed any money, goods, services, or property obtained through the coerced debt.

The bill restricts claimants from bringing actions to collect coerced debt against an individual who coerced the debt to within five years of the date a court determines that the individual caused the duress, intimidation, threat of force, force, fraud, or undue influence giving rise to the coerced debt.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 11 Nay 1 (03/07/2023)

Judiciary Committee

Joint Favorable

Yea 32 Nay 5 (05/09/2023)